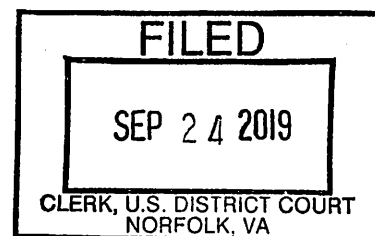


**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**



UNITED STATES OF AMERICA,

v.

CRIMINAL ACTION NO. 2:15cr100

KEDRIO LEKEIS SUMMERVILLE,

Defendant.

ORDER

The instant action was initiated by Kedrio Lekeis Summerville ("Petitioner") for writ of habeas corpus under 28 U.S.C. § 2255 (ECF No. 42), which was dismissed by Final Order on July 11, 2018. ECF No. 66. On September 21, 2018, this Court received and filed Petitioner's Notice of Appeal, which was signed and dated September 19, 2018 and certified service on the same date. ECF No. 68. The Notice of Appeal was due on September 9, 2018 and appeared untimely. However, the Notice of Appeal was received within the 30 days by which the Court may extend the time for noting an appeal under Federal Rule of Appellate Procedure 4(a)(5)(a).

By unpublished Opinion, the United States Court of Appeals for the Fourth Circuit ("Fourth Circuit") remanded this case for the limited purpose of allowing this Court to make factual findings to determine whether Petitioner demonstrated excusable neglect or good cause warranting an extension of the time to file a Notice of Appeal. ECF No. 75. The matter was referred to a United States Magistrate Judge, who directed Petitioner to supplement the record with any evidence sufficient to demonstrate good cause for an extension of time within which to file his Notice of Appeal. ECF No. 77. The Magistrate Judge received exhibits and memoranda from Petitioner (ECF No. 79), as well as a response by the Government (ECF No. 80). Thereafter, the Magistrate Judge filed a Report and Recommendation ("R&R") on July 30, 2019.

ECF No. 81. The Magistrate Judge recommended the Court adopt the R&R's findings of fact, grant Petitioner's extension of time to appeal, and thereafter return the record as supplemented to the Fourth Circuit for further consideration. *Id.* Each party was advised of the right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court received no objections to the R&R and the time for filing objections has now expired. Accordingly, the Court **ADOPTS** the findings and recommendations set forth in the Magistrate Judge's R&R filed July 30, 2019 and makes the following findings of fact:


Petitioner's evidence established that he had a disagreement with his attorney regarding the merits of any appeal he might file and that there is some lack of clarity about when his attorney officially ceased representing him. More importantly, Petitioner was in nearly constant transition between incarceration facilities from the time this Court's denied his § 2255 Motion on July 11, 2018 to the expiration for timely filing of his Notice of Appeal on September 9, 2018. During this time, Petitioner was housed in Warsaw, Virginia; Oklahoma; and Atlanta, Georgia before coming back to his permanent housing facility at FCI Butner in North Carolina. In fact, Petitioner did not return to FCI Butner until September 11, 2018, at which time the facility was experiencing a lockdown caused by a hurricane. Such an unusual series of transfers, coupled with Petitioner's prompt action once he arrived at FCI Butner even in the aftermath of a hurricane-induced lockdown, constitutes good cause for permitting relief under Federal Rule of Appellate Procedure 4(a)(5). *See United States v. Allison*, No 1:04cr93-01, 2009 WL 5062369 (W.D. Va. Dec. 15, 2009) (finding good cause when *pro se* petitioner was in transit or residing in medical facilities during the filing period).

It is therefore **ORDERED** that the record be supplemented with the factual findings set forth above and returned to the United States Court of Appeals for the Fourth Circuit for further

consideration in connection with Petitioner's pending proceedings in that court. The Court **DIRECTS** the Clerk to send a copy of this Order to the Parties.

IT IS SO ORDERED.

Norfolk, Virginia
September 23, 2019



Raymond A. Jackson
United States District Judge